

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

RICARDO MARTINEZ

MARIALUISA MARTINEZ

Debtor(s)

)
)
) Chapter 13
) Case No. 09-5-6997 RLE
)

)
)
) TRUSTEE'S OBJECTION TO
) CONFIRMATION WITH CERTIFICATE OF
) SERVICE
)

)
) 341 Meeting Date: October 9, 2009 @ 11:30
) a.m.
)

) Pre-Hearing Conference Date: December 10,
) 2009
)

) Pre-Hearing Conference Time: 2:00 pm
) Place: 280 S. 1st Street
) San Jose, CA Room 3099
)

) Judge: Roger L. Efremsky
)

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this 0% Plan for the following reasons:

1. The Trustee objects to feasibility of the proposed plan pursuant to 11 U.S.C. 1325(a)(6) for the following reason: The proposed plan does not provide for arrears and/or on-going payments to junior lienholders on real property because a motion or adversary to eliminate the lien will be filed. This proposal does not demonstrate how the debtor(s) will be able to pay the amounts due to junior lienholders in the event the debtor is not successful in eliminating the lien.

- 1 2. The Trustee is unable to determine whether the proposed term meets the requirements of
2 11 U.S.C. §1322(d). Section 1 of the Plan indicates that the debtors' plan payments are
3 \$828 for 24 months, then \$1,550 for 36 months. Pursuant to Section 2(d) of the Plan, the
4 term is estimated, and therefore, an Amended Plan must be filed to delete reference to the
5 specific number of months the debtor will make plan payments of \$1,550.
6
- 7 3. The Trustee is unable to determine if the Plan is feasible pursuant to 11 U.S.C.
8 §1325(a)(6), as the debtors provided for adequate protection payments to secured
9 creditors in Section 2(b) of the plan in an amount that exceeds their plan payments. The
10 adequate protection payments total \$1,134.85, while the debtors' plan payments are only
11 \$828 for the first 24 months. Therefore, the Trustee will not be able to disburse on the
12 amounts provided for in Section 2(b), along with Trustee's fees.
13
- 14 4. Pursuant to 11 U.S.C. §521(a)(1)(B)(iv), Marialuisa Martinez has failed to provide the
15 Trustee with copies of her payment advices for the 60 days preceding the filing of the
16 petition. The Trustee did not receive payment advices dated on or about June 26 or July
17 10, 2009. If the debtor cannot provide said payment advices, a declaration signed by the
18 debtor under penalty of perjury must be provided explaining why said payment advices
19 are not available.
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23 Dated: October 2, 2009

/S/ Devin Derham-Burk

24 Chapter 13 Trustee
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Said envelopes were addressed as follows:

Elise Mitchell, Esq.
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San Jose, CA 95112

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